



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1237

fertility fraud; civil; criminal action

Purpose

Establishes a civil cause of action for *fertility fraud*.

Background

Statute establishes civil remedies for malpractice by health care professionals. A *medical malpractice action* or *cause of action for medical malpractice* means an action for injury or death against a licensed health care provider based upon such provider's alleged negligence, misconduct, errors or omissions, or breach of contract in the rendering of health care, medical services, nursing services or other health-related services or for the rendering of such health care, medical services, nursing services or other health-related services, without express or implied consent including an action based upon the alleged negligence, misconduct, errors or omissions or breach of contract in collecting, processing or distributing whole human blood, blood components, plasma, blood fractions or blood derivatives.

A *licensed health care provider* means both: 1) a person, corporation or institution licensed or certified by the state to provide health care, medical services, nursing services or other health-related services and includes the officers, employees and agents thereof working under the supervision of such person, corporation or institution in providing such health care, medical services, nursing services or other health-related services; and 2) a federally licensed, regulated or registered blood bank, blood center or plasma center collecting, processing or distributing whole human blood, blood components, plasma, blood fractions or blood derivatives for use by a licensed health care provider and includes the officers, employees and agents working under the supervision of the blood bank, blood center or plasma center ([A.R.S. § 12-561](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Allows a civil action for fertility fraud to be brought against a licensed health care provider who knowingly or intentionally treated a woman for infertility by using the licensed health care provider's own spermatozoon (sperm) or ovum without the patient's informed written consent to treatment using that sperm or ovum.
2. Provides that the action can be brought by:
 - a) a woman who gives birth to a child after being treated for infertility by a physician;
 - b) the spouse of the woman;
 - c) the surviving spouse of the woman; or
 - d) the child born as a result of the actions of the physician.

3. Provides that a person who brings an action for fertility fraud has a separate cause of action for each child born as the result of the fraudulent fertility treatment.
4. Allows a donor of human reproductive material (donor) to bring a civil action against a licensed health care provider who treats a patient for infertility by using human reproductive material donated by the donor and who knows or reasonably should have known that the donor's human reproductive material was used:
 - a) without the donor's consent; or
 - b) in a manner or to an extent other than that to which the donor consented.
5. Provides that a donor who brings an action for fertility fraud has a separate cause of action for each individual who received fertility treatment with the donor's human reproductive material.
6. Entitles a plaintiff who prevails in a fertility fraud civil action to reasonable attorney fees, the costs of the fertility treatment, in specified circumstances, and:
 - a) compensatory and punitive damages; or
 - b) liquidated damages of \$10,000.
7. Requires a civil action for fertility fraud to be commenced within:
 - a) 10 years after the 18th birthday of the child; or
 - b) for donors, 20 years after the procedure was performed.
8. Allows a civil action for fertility fraud that would otherwise be time barred to be commenced within five years after the earlier of the date that:
 - a) the person first discovers evidence sufficient to bring an action against the defendant through DNA analysis;
 - b) the person first becomes aware of the existence of a recording that provides evidence sufficient to bring an action against the defendant; or
 - c) the defendant confesses to the offense.
9. Defines *human reproductive material* as a human sperm or ovum or a human organism at any stage of development from fertilized ovum to embryo.
10. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Removes the creation of a new crime for *human reproductive material fraud*.

Senate Action

JUD 2/11/21 DPA 8-0-0

Prepared by Senate Research

February 12, 2021

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